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SUMMONS

Doc. No. 270056

IN THE DISTRICT COURT OF Douglas COUNTY, NEBRASKA
1701 Farnam
Omaha NE 68183

Lynn R Nelson v. Blue Cross and Blue Shield of NE

Case ID: CI 14 5384

TO: Blue Cross and Blue Shield of NE

FILED BY
Clerk of the Douglas District Court
07/07/2014

You have been sued by the following plaintiff(s):

Lynn R Nelson

Plaintiff's Attorney: Jason Bruno
Address: 260 Regency Pkwy Dr., #200
Omaha, NE 68114

Telephone: (402) 390-1112

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JULY 7, 2014

BY THE COURT:

John M. Friend
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Blue Cross and Blue Shield of NE
c/o Gayle Sole Registered Agent
7261 Mercy Road
Omaha, NE 68180

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

EXHIBIT
"A"

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LYNN R. NELSON

Plaintiff,

vs.

BLUE CROSS AND BLUE SHIELD OF
NEBRASKA,

Defendant.

Case No.

COMPLAINT

COMES NOW the Plaintiff Lynn R. Nelson and for her Complaint against the Defendant states and alleges as follows:

1. Plaintiff Lynn R. Nelson (hereinafter "Nelson") is an individual residing in Omaha, Douglas County, Nebraska.
2. Defendant Blue Cross and Blue Shield of Nebraska (hereinafter "Blue Cross") is a Nebraska insurance company.
3. Nelson was a covered insured of Blue Cross under an insurance plan issued through her employer, ConAgra Foods ("the Plan"). The Plan and its coverage were in effect at all relevant times to the dates of service at issue.
4. While covered under the Plan, Nelson underwent an inpatient stay at Methodist Hospital (hereinafter "Methodist") from April 18, 2012 to April 21, 2012 for surgery to repair two hernias.
5. The surgery was performed by Gary Anthone, MD, a board certified general surgeon with over 27 years of experience.
6. The hernia repairs were recommended by a competent physician and deemed necessary to repair an injury and avoid further illness, injury, or even death to Nelson.

7. Methodist's total charges were \$21,842.06.
8. Methodist's services and the charges for the same are clearly covered under the Plan, which provides coverage and payment for:
 - Anesthesia (Pg. 24);
 - Hospital services such as nursing care, drugs and medications, X-rays and laboratory tests (Pg. 25);
 - Inpatient Physician care (Pg. 25);
 - Semi-private room and board, cardiac care and intensive care room for Hospital stays (Pg. 26);
 - Surgical care (Pg. 26);
 - X-ray & Lab (Pg. 8);
 - Inpatient Hospital Care (Pg. 8); and
 - Medical Supplies (Pg. 8).
9. Despite the fact that the Plan covered the charges submitted by Methodist, Blue Cross denied the overwhelming majority of Nelson's claim and paid only \$64.87 to Methodist.
10. As a result of Blue Cross' refusal to pay, Methodist is now looking to Nelson for payment of \$21,613.06¹ and threatening to take collection action against Nelson.
11. Both Nelson and Methodist have made demands and requests upon Blue Cross for payment. Blue Cross has continually refused to make any further payments or even consider Nelson's appeal from the denial of her claim under the Plan.
12. Blue Cross' decision to deny Nelson's claim was not based upon any investigation or the actual services that were provided to Nelson. Blue Cross' decisions and actions are contrary to Nelson's medical records and directly contrary to the provisions of the Plan.
13. Blue Cross had no evidence or reasonable basis to deny Nelson's claim.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

14. Nelson incorporates the foregoing paragraphs as if fully set forth herein.

¹ The amount was reduced because of an additional contract adjustment of \$164.93.

15. Nelson has, at all times, performed her duties and obligations under the Plan, including the timely payment of premiums.
16. Blue Cross had a contractual duty and obligation to pay for the services received by Nelson under the Plan.
17. Blue Cross breached its duty to Nelson by, among other things:
 - a. Failing to adequately investigate Nelson's claim in good faith;
 - b. Ignoring provisions of the Plan and the medical records; and
 - c. Failing and refusing to pay or offering to pay for the covered charges and services under the Plan.
18. As a direct and proximate result of Blue Cross' breach of its duties under the Plan, Nelson suffered damages that include, but are not limited to, the following:
 - a. \$21,613.06 of charges from Methodist for services that were expressly covered under the Plan;
 - b. Attorney fees and costs incurred from being forced to hire an attorney to obtain payment on a valid claim and institute the present action; and
 - c. Any damages resulting from collection activities, interest, late charges, or harm to Nelson's credit or reputation.

SECOND CAUSE OF ACTION – BAD FAITH

19. Nelson incorporates the foregoing paragraphs as if fully set forth herein.
20. Blue Cross acted in bad faith in the handling of Nelson's claim, including by:
 - a. Refusing to implement a good, fair, prompt, and adequate investigation into and settlement of Nelson's claims;

- b. Knowingly misrepresenting to Nelson relevant facts relating to the coverage at issue.
 - c. Compelling Nelson to resort to legal action to recover the full amounts due under the Plan.
 - d. Not attempting in good faith to effectuate a prompt, fair, and equitable settlement of claims in which liability is reasonably clear.
 - e. Attempting to settle the claim with Nelson for an amount less than what a reasonable person would believe Nelson was entitled to recover. Specifically, Blue Cross paid \$64.87 for medical services and charges of \$21,842.06, or only **0.29%**.
 - f. Refusing to consider or review information from Nelson or Nelson's appeal;
 - g. Making representations that Nelson's attorney could not file an appeal of the denial of her claims on behalf of Nelson.
21. Blue Cross' actions evidence malice, gross negligence, and reckless disregard for Nelson's rights under the Plan and Nebraska law.
22. As a direct and proximate result of Blue Cross' bad faith practices and failure to honor its obligations under the Plan, Nelson has suffered and will continue to suffer economic loss and has incurred attorney fees and costs.

WHEREFORE Plaintiff Lynn R. Nelson respectfully requests that the Court enter a Judgment against the Defendant for:

- a. General and special damages both present and future in an amount to be proven at trial but no less than \$21,613.06;

- b. prejudgment interest accruing from April 21, 2012 at the rate of 12% per annum and post judgment interest;
- c. costs and attorney fees pursuant to Nebraska law including, but not limited to, Neb. Rev. Stat. § 44-359; and
- d. such other relief as may be necessary, fair, or just.

Respectfully submitted,
Lynn R. Nelson, Plaintiff,

By: /s/ Jason Mario Bruno
Jason Mario Bruno, NE #23062
SHERRETS BRUNO & VOGT LLC
260 Regency Parkway Drive, Suite 200
Omaha, NE 68114
Tele: (402)390-1112
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law@sherrets.com
ATTORNEY FOR THE PLAINTIFF

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LYNN R. NELSON

Plaintiff,

vs.

BLUE CROSS AND BLUE SHIELD OF
NEBRASKA,

Defendant.

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Case No.

PRAECIPE

TO: Clerk of the District Court

Please issue a Summons and Complaint to be served by United States Certified Mail

Return Receipt Requested to:

Blue Cross and Blue Shield of Nebraska
c/o Gayle Sole Registered Agent
7261 Mercy Road
Omaha, NE 68180

Respectfully submitted,
Lynn R. Nelson, Plaintiff,

By: /s/ Jason M. Bruno
Jason M. Bruno, NE #23062
SHERRETS BRUNO & VOGT LLC
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ATTORNEY FOR THE PLAINTIFF